

REMARKS

In order to emphasize the patentable distinctions of applicants' invention over the prior art, claim 1, as well as claims 2 – 13 dependent thereon, has been amended to recite that the questionnaire employed by the survey means is provided to selected candidates within different organizational levels of a contractor's business. In addition, claim 1, as well as claims 2 – 13 dependent thereon, has been amended to provide that the selected candidates comprise workers, foremen, project managers, engineers, and principals. Claim 1, as well as claims 2 – 13, has also been amended to further claim that the on-location assessment means comprise asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures. Each of these amendments is clearly supported by the original specification, particularly at: page 16, lines 7 – 9 and lines 1 – 5; and page 17, lines 1 – 5.

As amended present claims 1 – 13 provide a contractor certification system that evaluates a contractor's business and financial practices in a multifaceted approach by requiring survey means comprising a questionnaire that is presented to selected candidates within different organizational levels of a contractor's business. By providing a questionnaire to different organization levels of the business, an in-depth internal examination of a contractor's business can be achieved. Applicants' present claims 1 – 13 yields a certification system that derives a full gamut of expertise by questioning multiple levels within the contractor's business.

Additionally, present claims 1 – 13 have been amended to require that the claimed on-location assessment means comprise asking questions to each of the candidates

selected through the mapping means and observing examples of the contractor's business practices and financial procedures. The on-location assessment feature required by applicants' present claims 1 – 13 results in a system that provides a thorough assessment of the contractor's practices, thereby providing a ranking that is highly reliable.

Applicants' Contractor Certification System, as required by present claims 1 – 13, comprises a survey means comprising a questionnaire provided to selected candidates within different organizational levels of a contractor's business. Questionnaires are provided to selected candidates comprising workers, foremen, project managers, engineers, and principals and are utilized for gathering answers concerning information detailing the contractor's business and financial practices. Answers given by the selected candidates representing different organization levels within the business are gathered and used for assessing the contractor's business and financial practices by an independent third party. A mapping means for studying the answers provided to the questionnaire is utilized in selecting on-location job site visits and candidates for interviews. On-location assessment means comprise asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures. From the survey and on-location assessment means a comparison means for assessing the contractor's business and financial practices is carried out so that the contractor can be ranked in comparison with industry standards. Additionally, applicants' claims 1 – 13 require reporting means for providing a grade indicative of the contractor's rank.

The combination of features required by applicants' claims 1 – 13 provides a system that concisely determines a contractor's business and financial practices by

probing the intricacies of a contractor's business through surveying selected candidates from different organizational levels. An objective evaluation of a contractor's risk value for surety and lending institutions is achieved through the combination of features required by applicants' present claims 1 – 13. Specifically, the approach of surveying candidates from different organizational levels provides a multifaceted accurate representation of the daily practices of the contractor's business. In addition, third party assessment, analysis, and on-location direct questioning and observation, as required by present claims 1 – 13, further facilitates an accurate representation of the contractor's business practices. Direct questioning and observation of business practices by non-biased third party assessors provide unique advantages, which yield a highly reliable ranking that can be relied upon by lenders with confidence. Such reliance and confidence levels can effectively be realized by lenders, contractors, and consumers alike, leading to lower interest rates, a productive relationship between the lenders and contractors, and overall lower costs to consumers.

I. Previous Claim Objections and Rejections – 35 U.S.C §§112 and 101

Applicants wish to express their appreciation to the Examiner for withdrawing the previous objections to applicants' specification. Applicants additionally wish to express their appreciation to the Examiner for withdrawing the previous rejections based on (i) lack of antecedent basis under 35 U.S.C §112, and (ii) non-statutory subject matter under 35 U.S.C §101.

II. Claim Rejections – 35 USC §103

The Examiner has rejected claims 1 – 11 under 35 USC §103(a) as being unpatentable over US Patent No. 5,765,138 to Aycock et al. in view of GuruNet's "Business Evaluation Statements" (hereinafter, "GuruNet"), and further in view of US Patent Application No. 2002/0099586 A1 to Bladen et al.

The Examiner has stated that Aycock et al. teaches a contractor certification (supplier evaluation) system comprising survey means comprising a questionnaire (RFP/RFQ), which is provided to selected candidates (suppliers that desire to be qualified as vendors) within a contractor's business for gathering answers concerning information detailing business and financial practices (design, production, distribution, serviceability, and reliability of the supplier's product or service), said answers being used for assessing business (service and support) and financial practices (price and availability) of said contractor's practices. (Examiner cited Aycock, col. 6, lines 1 – 9).

In addition, the Examiner has stated that the system in Aycock et al. teaches on-location assessment (on-site audit) means for determining (validating) business and financial practices at the contractor's operations, comparison means (risk assessment) for assessing business and financial practices (technical capabilities), ranking the contractor in comparison with industry standards, and reporting means (product database) for providing a grade indicative of said contractor's rank (competitive analysis of all vendors to determine the respective performance). (Examiner cited Aycock, col. 7, lines 62 – 65, col. 8, lines 58 – 63, col. 9, lines 59 – 67, and col. 10, lines 1 – 17).

The Examiner has also stated that Aycock et al. fails to teach assessment means for determining the financial practices of a contractor's operations. However, the

Examiner has indicated that GuruNet teaches a set of assessment statements that can be used to evaluate the financial practices of a company. The Examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aycock et al. to include the evaluatory statement directed towards business and financial practices presented by GuruNet to evaluate the financial practices of a potential contractor as a factor utilized by surety institutions.

Moreover, the Examiner has stated that the combined teaching of Aycock et al. and GuruNet fail to teach a mapping means for studying answers provided to a questionnaire. According to the Examiner, Bladen et al. teaches a risk assessment system where performance can be compared against an industry benchmark using trend analysis graphs as results. The Examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aycock et al. to include a mapping means since it is quite advantageous for these graphs to be used to compare the overall performance of a contractor to industry standards or competitors, or to map their individual strengths and weaknesses.

Additionally, the Examiner has stated that neither Aycock et al., GuruNet, nor Bladen et al. teach that the answers are used for assessment by an independent third party. However, the Examiner has taken Official Notice that it is an old and well-known practice to have an independent third party administer the survey and assessment; therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teaching of Aycock et al., GuruNet and Bladen et al. to have the survey and assessment administered by an independent third party because the resulting combination would guarantee impartiality and fairness of the evaluation

process, and would comply with any government or industry regulations requiring third party assessments. (See herein below in Section III for applicants' remarks pertaining to the Official Notice).

Neither Aycock et al., GuruNet, nor Bladen et al. taken alone, or in combination, disclose or suggest a contractor certification system as required by applicants' claims 1 – 13. In particular, neither Aycock et al., GuruNet, nor Bladen et al. taken alone, or in combination, teach a contractor certification system utilizing a survey means comprising a questionnaire provided to selected candidates comprising workers, foremen, project managers, engineers, and principals, found within different organizational levels of a contractor's business for gathering answers used for assessing business and financial practices.

Aycock et al. discloses an apparatus and method for providing an interactive evaluation of suppliers as proposed vendors for a project. The Aycock et al. patent provides a system and method used to analyze supplier capabilities in order to qualify a supplier as a vendor for a project. The supplier evaluation system taught by Aycock et al. provides for the selection of vendor requirements, which are selected and assigned relative weight on the basis of project objectives. These requirements are provided to a supplier, and the supplier submits responses thereto. The supplier responses are assigned a scaled score on the basis of corresponding vendor responses. The scaled score is correlated with the relative weight of the requirements, and a supplier maturity level is calculated. This supplier maturity level refers to the supplier's sophistication and capabilities in establishing and maintaining quality standards in the design, production, distribution, serviceability, and reliability of the supplier's product and service.

The supplier evaluation system disclosed by Aycock et al. does not question or evaluate business and financial practices within the supplier's business, as required by applicants' present claims 1 – 13. Significantly, the questions and requirements proposed by the Aycock et al. supplier evaluation system deal with technical specifications, price and availability, service and support, selected quality maturity requirements, production, distribution, serviceability, and reliability of products or services (col. 6, line 2 – 5; col. 3, lines 9 – 13). The Examiner has indicated that these evaluations can be utilized to measure (albeit indirectly) financial practices. Even if these evaluations *indirectly evaluate* financial practices, these evaluations cannot rise to the level necessary for predicating risk ranking in securing lines of credit. Decline of a contractor typically occurs gradually, with signs of deterioration visible only in the very late stages, so that measuring of such metrics as availability, design, production, and the like, which are very useful in determining supplier capabilities, would not be enough to establish risk assessment in the financial realm.

It is respectfully submitted that none of Aycock et al., GuruNet, or Bladen et al., or any combination thereof, disclose or suggest a contractor certification system that utilizes a survey means comprising a questionnaire, which is provided to selected candidates comprising workers, foremen, project managers, engineers, and principals, found within different organizational levels of a contractor's business. Applicants' present claims 1 – 13 require that the selected candidates comprise workers, foremen, project managers, engineers, and principals, thus resulting in a system wherein individuals at a plethora of different organizational levels of the contractor's business are questioned. Compiling the answers from theses different candidates, as required by

applicants' claims, provides a survey that examines every level and aspect of the contractor's business and financial practices. Applicants present claims 1 – 13 yields a certification system that derives a full gamut of expertise by questioning all levels within the contractor's business. This multifaceted approach is not disclosed or suggested by the combined teachings of Aycock et al., GuruNet, and Bladen et al.

The Examiner has agreed that neither of the Aycock et al. nor GuruNet teachings discloses that the answers are used for assessment by an independent third party. However, the Examiner has taken Official Notice that it is an old and well-known practice to have an independent third party administer the survey and assessment. Applicants respectfully traverse the Official Notice take by the Examiner. (The reasons for applicants' traverse are set forth in **Section III** herein below).

In addition, neither Aycock et al., GuruNet, nor Bladen disclose on-location assessment means comprising asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures as is required by applicants' present claims 1 – 13. Aycock et al. merely provides for an interactive evaluation of suppliers as proposed vendors for a project wherein suppliers respond to questions in order for a maturity level to be determined. Only if the supplier is not approved will a "Tier 2 analysis" take place wherein an on-site supplier audit is carried out. (Aycock et al., Fig. 1). In Aycock et al. on-site evaluation only takes place if the supplier fails to be approved. There is no direct questioning combined with direct observation as is required by applicants' present claims 1 – 13. Direct questioning aggregated with observations of on-site business and financial procedures delves deeper into the intricacies of the contractor's business than can be

achieved through questioning alone. On-location assessment required by applicants' present claims 1 – 13 results in a system that provides an extremely thorough assessment of the contractors' practices, thereby providing a ranking that is highly reliable.

Claims 2 – 13 have been rejected by the Examiner under 35 U.S. C. §103(a) as being unpatentable over Aycock et al. in view of GuruNet, and further in view of Bladen et al. Claims 2 - 10 depend from currently amended claim 1, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 2 – 10 contain all the limitations of independent amended claim 1, it is submitted that these dependent claims are also patentable over the proposed combination of Aycock et al. taken in view of GuruNet, and further in view of Bladen et al.

Accordingly, reconsideration of the rejection of claims 1 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

III. Official Notice– MPEP 2144.03

The Examiner has asserted that the following facts are old and well-known: (i) independent third party administration of a survey and assessment of same (regarding previously presented claims 1 – 13); (ii) that evaluations of a business can be used for a plurality of applications such as lines of credit (regarding previously presented claim 12); and (iii) that certifications require renewal (regarding previously presented claim 13). However, the Examiner's assertions of fact are not an appropriate basis for taking Official Notice because the facts asserted by the Examiner are not capable of instant and unquestionable demonstration. Moreover, the Examiner's assertion of fact that it is an

old and well-known practice for an independent third party to administer a survey and perform an assessment contradicts the teachings of the applied references of record, namely Aycock et al., GuruNet, and Bladen et al.

In *limited circumstances*, it is appropriate for an examiner to take official notice of facts not in the record or to rely on “common knowledge” in making a rejection; however, such rejections should be judiciously applied. MPEP 2144.03. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection, as is the case herein. MPEP 2144.03(A).

Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. MPEP 2144.03(A). It is not appropriate for an examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known. MPEP 2144.03(A). Moreover, it is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. MPEP 2144.03(A).

Neither Aycock et al., GuruNet, nor Bladen et al. teach evaluations of a contractor’s business as required by applicants’ present claim 1 and further limited by applicants’ present claim 12 to be used for assessing risks in lending. In addition none of the art references teach an evaluation that is performed annually. There must (ordinarily) be some form of evidence in the record to support assertions of common knowledge. Clearly, there is no evidence on the record to support the Examiner’s assertions that

evaluations of a business can be used for a plurality of applications, such as lines of credit and certifications that require renewal. Accordingly, it is submitted that the Examiner's assertions are not properly based upon common knowledge in compliance with MPEP 2144.02 *et seq.*

Moreover, neither Aycock et al., GuruNet, nor Bladen et al. teach administration and assessment of a survey by an independent third party. Instead, these references tend to contradict the importance of independent third party administration and assessment of questionnaires. In particular, Aycock et al. teaches a self-evaluation system provided to suppliers wherein the suppliers answer objective questions, and their responses are uploaded into an evaluation system so that a supplier maturity level is calculated. GuruNet teaches a self-evaluation system wherein a list of statements is utilized to evaluate an individual's company in order to determine areas needing improvement. Bladen et al. teaches a method, system, and computer program product for risk assessment and risk management wherein self-evaluation is again utilized. These references tend to teach away from the use of a third party survey and assessment wherein on-location visits are utilized to directly ask questions and directly observe practices.

Accordingly, it is respectfully requested that the Examiner produce evidentiary support as authority for the official notices taken herein, or withdraw the official notices as a basis for rejection of applicants' claims. 37 CFR §1.111(b); *Chevenard*, 139 F.2d at 713, 60 USPQ at 241; TMEP 2144.03 *et seq.*

CONCLUSION

In view of the amendment to claim 1, as well as claims 2 – 13 dependent thereon, and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the Final Rejection, entry of this amendment, and allowance of claims 1 – 13, as amended, are earnestly solicited.

Respectfully submitted,
David J. Alverson et al.


By _____

Ernest D. Buff
(Their Attorney)
Reg. No. 25,833
(908) 901-0220